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Dear \_\_\_\_\_ :

This responds to a letter dated July 6, 2006, submitted on behalf of Trust, requesting rulings under §§ 664 and 4941 of the Internal Revenue Code concerning the qualification of Trust as a charitable remainder unitrust (CRUT).

The information submitted states that on Date 1, A and B created Trust with the intention that Trust qualify as a fixed percentage CRUT under § 664(d)(2). A is the trustee of Trust. A and B established Trust with the assistance of an attorney. However, due to a drafting error, Trust was drafted inadvertently as a net income makeup charitable remainder trust (NIMCRUT) rather than as a CRUT.

The introductory paragraph of Trust describes a fixed percentage CRUT. However, Trust provides that the unitrust amount payable to A and B during their lifetimes is the lesser of (a) the Trust income for the taxable year, as defined in § 643(b), and, (b) x% of the net fair market value of the Trust assets valued as of the first day of each taxable year of Trust.

In order to correct the scrivener's error, and because Trust is irrevocable, the trustee sought an order from Court authorizing an amendment ab initio of Trust. No parties objected to the proposed reformation. On Date 2, Court issued an order reforming Trust to a fixed percentage CRUT, ab initio, subject to the Service issuing a private letter ruling that the reformation of Trust will not disqualify Trust as a charitable remainder trust.

Section 664(d)(2) provides that for purposes of § 664, a CRUT is a trust—(A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined § 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such

property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of §§ 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in § 170(c).

Section 4941(a)(1) imposes an excise tax on disqualified persons for each act of self-dealing between a disqualified person, as defined in § 4946, and a private foundation.

Section 4941(d)(1)(E) defines self-dealing as including any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) provides that the term “disqualified person” with respect to a private foundation includes a person who is a substantial contributor to the foundation (including the creator of a trust), a family member of a substantial contributor (including children), and a foundation manager (including a trustee).

Section 4947(a)(2) provides, in pertinent part, that in the case of a trust which is not exempt from tax under § 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has amounts in trust for which a charitable deduction was allowed, § 4941 and other provisions apply as if such trust were a private foundation.

Section 4947(a)(2) (A) provides, in pertinent part, that the provisions of section 4947(a)(2) do not apply with respect to the amounts payable under the terms of such split-interest trust to its income beneficiaries.

Sections 53.4947-1(c)(2) and 53.4947-1(c)(2)(ii), Example (1), of the regulations indicate, in pertinent part, that the payments of income under the term of the trust by a charitable remainder unitrust to its individual income beneficiaries do not result in any tax on self-dealing under § 4941.

Based solely on the information submitted and representations made, we conclude that the judicial reformation of Trust, ab initio, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRUT under § 664(d)(2), ab initio, so long as the trustee files amended tax returns on behalf of Trust for Year 1, Year 2, and Year 3, treating Trust as a CRUT, rather than as a NIMCRUT. Additionally, in Year 4, the trustee must include the appropriate amounts that should have been distributed to A and B in all of the prior years under § 662(d)(2) in the distribution to A and B.

As a charitable remainder unitrust under § 664(d)(2), Trust is a split-interest trust described in § 4947(a)(2). By being described in § 4947(a)(2), Trust is subject to the provision of § 4941 and certain other provisions, as if it were a private foundation. A private foundation is subject to § 4941, which imposes an excise tax on acts of self-dealing. A and B are disqualified persons with respect to Trust because they are substantial contributors to Trust.

The judicial reformation of Trust will result in additional payments from the Trust to A and B, as the non-charitable beneficiaries, to make up for the deficit caused by the scrivener's error. Under § 4947(a)(2)(A) and § 53.4947-1(c)(2)(ii), Example (1), of the regulations, a charitable remainder unitrust's payments to its income beneficiary do not result in any tax on self dealing under § 4941. Therefore, the judicial reformation will not constitute an act of self dealing within the meaning of section 4941.

Additionally, the judicial reformation of the trust document to provide for a different payout amount from that of the incorrectly drafted original trust document is not an act of self-dealing in that judicial reformation is required to reflect the intent of A and B at the time of the execution of the trust document.

The conclusion that there is no self-dealing is also based in part on the order of Court accepting as true the allegations of the underlying petition. The conclusion is also based upon the stated "Declarations" of A and B and on a third party who has personal knowledge of some of the discussions leading to the adoption of the trust. These "Declarations" were submitted as a part of the petition filed with the court.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder trust within the meaning of § 664.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: